

DOCKET NO: 279307US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
XU HE, ET AL. : EXAMINER: EGWIM, K. C.
SERIAL NO: 10/553,793 :
FILED: OCTOBER 18, 2005 : GROUP ART UNIT: 1796
FOR: POLYMER DISPERSION WITH A :
COLOUR EFFECT

PETITION UNDER 37 C.F.R. §§ 1.181 AND 1.183

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Applicants respectfully petition from the Examiner's withdrawal of Claims 11-16, 21 and 25 from consideration.

STATEMENT OF FACTS

Prior to the amendment filed December 19, 2008 (Amendment), Claim 11 read as follows:

The process as claimed in claim 1, wherein a transparent polymer layer is applied to the colored polymer system.

In said Amendment, Claim 11 was amended as follows:

The process as claimed in claim 1, wherein a transparent polymer layer is applied to the ~~colored polymer system~~ polymcric film.

The amendment to Claim 11 is consistent with the amendment to Claim 1 in the Amendment, which further clarified the invention, and particularly that the colored polymer

system meant a polymeric film that produces a visual effect upon reflection of electromagnetic radiation.

The Examiner now finds that the above-identified claims are directed to an invention that is independent or distinct from the original invention because Claim 11, and the other claims, all of which depend on Claim 11,

now clearly requires a multi-layered product/process prepare [sic] from the intermediate product of the present film/process.

The present intermediate process and product is deemed to be separately useful as a coating film and the inventions are deemed patentably distinct because there is nothing of record to show them to be obvious variants. (M.P.E.P. § 806.05(j)).

ARGUMENT

Applicants traverse the withdrawal of the above-identified claims from consideration, since Claim 11, even before the Amendment, was drawn to the formation of a multi-layered product. It is hornbook law that claims are to be construed in light of the specification.

When read in light of the specification, it is clear that the invention recited in present Claim 11 is not independent and not distinct from the invention recited in Claim 11 prior to the Amendment but is, in essence, the same invention. In addition, among the above-identified claims, while Claim 25 is identified as a new claim, its subject matter is supported by Claim 17, which has been examined with the other claims prior to the Amendment and which has not been withdrawn from consideration.

While the above is sufficient to demonstrate error in the Examiner's action, Applicants add that restriction is not proper if search and examination of an entire application can be made without serious burden, even though it may include claims to distinct or independent inventions. No showing of serious burden has been made by the Examiner.

Applicants further petition under 37 C.F.R. § 1.183 that any requirement of a Request for Reconsideration of the Examiner's action as discussed above, be waived, given the "after

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Final" status of this application. Such a requirement would only delay resolution of the substantive issues raised in the Office Action.

CONCLUSION

For all the above reasons, it is respectfully requested that the Examiner's withdrawal of Claims 11-16, 21 and 25 from consideration be vacated, and that an examination on the merits be caused to be conducted on said claims.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Norman F. Oblon



Harris A. Pitlick
Registration No. 38,779

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)